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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,086	04/25/2005	Andreas Harz	2002DE106	4228

25255	7590	01/24/2008
CLARIANT CORPORATION		
INTELLECTUAL PROPERTY DEPARTMENT		
4000 MONROE ROAD		
CHARLOTTE, NC 28205		

EXAMINER
ABU ALI, SHUANGYI

ART UNIT	PAPER NUMBER
1793	

MAIL DATE	DELIVERY MODE
01/24/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/510,086	<b>Applicant(s)</b> HARZ ET AL.	
	<b>Examiner</b> Shuangyi Abu-Ali	<b>Art Unit</b> 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

(1)

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/31/2007 has been entered.

(2)

### ***Status of Claims***

Claims 1-3 and 6-13 remain for examination. Claims 4-5 are cancelled.

(3)

### ***Response to Arguments***

Applicant's arguments with respect to Ashley et al. about the difference between colorant and pigment have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that combined teaching of Lofgren et al. and Tilokavichai et al. does not teach using organic pigment in the composition. The Examiner respectfully submits that combined teaching of Lofgren et al. and Tilokavichai teaches vegetable oil can be used in the fertilizer composition. Ashley et al. reference is withdrawn due to

applicant argument about the difference between colorant and pigment. A new reference is cited to show that organic pigment can be used in the composition. Furthermore combined teaching of Lofgren et al. and Tilokavichai et al. was used alone at the time the applicant did not amend the claims, which recited using inorganic pigment to color fertilizer.

(4)

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites a pigment composition comprising 5-60% by weight of organic pigment. Claim 3 recites that the composition comprising 10-60% by weight of inorganic pigment. The claimed composition comprising 5-60% organic pigment and 10-60% inorganic pigment is not described in the specification.

(5)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 1-3 and 6-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over combined teaching of WO 00/76649 A1 to Lofgren et al. and WO 97/19030 to Tilokavichai et al., further in view of EP 0049777.

Regarding claims 1- 3, Lofgren et al. disclose a method of coating fertilizer particles with a coating composition comprising 75% of oil and 25% of talc (table 2). But

they are silent about the specific oil used in the composition as applicant set forth in claim 1.

However, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to use vegetable oil in place of the mineral oil of Lofgren et al. as applicant set forth in claim 1, motivated by the fact that Tilokavichai et al., also drawn to coating fertilizer particles, disclose that although mineral oil is usable, vegetable oil is preferred from an environmental point of view (page 2, line 22)

But the combined teaching of Lofgren et al. and Tilokavichai et al. are silent about using organic pigment as applicants set forth in claim 1.

However, it would have been obvious to one of ordinary skill in the art at the time of invention to use an organic colorant such as an azo colorant to color fertilizer, motivated by the fact that '192, also drawn to fertilizer coating, disclose that organic pigment such as azo pigments are used in fertilizer coating because of economic reason ( machine translation page 2)

Regarding claim 6, Lofgren et al. disclose a process of coating fertilizer particles, which comprise of nitrogen, phosphate and potassium (page 5, line 15).

Regarding claim 7, Lofgren et al. disclose a process of coating fertilizer particles comprising grinding additive added into the composition (page 4, line 30).

Regarding claim 8, Lofgren et al. disclose a process of coating fertilizer particles comprising that talc particles are dispersed in oil (page 5, line 29).

Regarding claim 9, Tilokavichai et al. disclose a process of coating fertilizer particles comprising fertilizer particles comprising of 0.1-1.5 wt% of pigment composition (abstract).

Regarding claim 10, Lofgren et al. disclose a process of coating fertilizer particles comprising of the step that the coating composition is applied to the fertilizer particles through spraying (abstract).

Regarding claim 11, Lofgren et al. disclose a process of coating fertilizer particles comprising of the step of diluting the composition with an organic liquid (abstract).

Regarding claims 12, Tilokavichai et al. disclose a method of making colored fertilizer particles (abstract).

Regarding claim 13, Tilokavichai et al. disclose a method of making colored fertilizer particles (abstract).

(4)

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shuangyi Abu-Ali whose telephone number is 571-272-6453. The examiner can normally be reached on Monday - Friday.

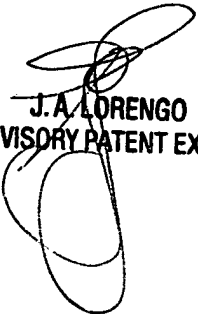
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sa

  
J. A. LORENZO  
SUPERVISORY PATENT EXAMINER